IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

OP.No. 5207 of 2000(T)

PETITIONER:

A.V. BHASKARAN NAIR, MANAGER
KALLIASSERY SOUTH U.P. SCHOOL, ANCHAMPEETIKA P.O

BY ADV. SRI.M.SASINDRAN
SRI.BEPIN VIJAYAN

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY SECRETARY,
GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM
2. DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM
3. DEPUTY DIRECTOR (EDUCATION) KANNUR
4. ASSISTANT EDUCATIONAL OFFICER, PAPPINISSERI, KANNUR
5. PRADEEP KUMAR K.V., RAMANILAYAM, KEECHERI
PAPPINISSERY P.O., KANNUR DISTRICT

R1 BY GOVT PLEADER SRI BENNY GERVASIZ
R5 BY ADV. SRI.K.P.HARISH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON 18/08/2007 DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

O. P. No 5207 of 2000

Dated: 18th August 2007

JUDGMENT

Radhakrishnan, J.

This matter has been placed before us on a reference by a learned single judge after having doubted the correctness of an unreported decision of another learned single judge of this court in K. Thalwahath v. State of Kerala (O.P. No 18097 of 1994).

2. The question to be considered is whether the total student strength of U.P. Section as well as L.P. Section, if the school is having L.P. Section, has to be taken together for the purpose of sanctioning a specialist post in the U.P. Section. Learned single judge of this court in O.P. No 18097 of 1994 held as follows:

> "A combined reading of Chapter II Rule 2, Rule 5 of Chapter XXIII and Rule 6B (2) thereof would clearly show the words occurring in Chapter XXIII Rule 6B (2) "U.P school having an effective strength of 500 pupils" should and can only be understood as by taking into consideration the total number of students from Class I to Class VII in that school when such school is functioning under one Headmaster."

Learned judge applying the above mentioned principle in that case

felt that the educational authorities had committed an error that the total strength of students only in standards V, VI and VII alone could be taken into consideration and not in standards I to VII. Learned judge of this court doubted the correctness of the above mentioned reasoning in the judgment in O.P. No 18097 of 1994 and took the view that use of the words " upper primary section" in the latter part of Rule 6B(2)(a) of Chapter XXIII of the Kerala Education Rules is clearly indicative of the fact that the intention is that, the effective strength of 500 pupils prescribed by that rule, has to be in the section concerned, and not in the school.

3. Rule 2 of Chapter II states that schools for general education shall be of primary and secondary. Upper Primary school shall be taken to include lower primary standards attached to it, if any, going by Note (ii) to Rule 2 of Chapter II of K.E.R. Rule 5 of Chapter XXIII provides that in every Upper Primary School there shall be one post of Headmaster, as many posts of U.P.S.As as the number of U.P. Class divisions, reduced by one and as many posts of L.P.S.As as there are L.P. Divisions. It is also provided that in determining the L.P.S.As the question whether the L.P. Section is working on shift system shall also be taken into account. The above mentioned

provision would clearly show a clear distinction has been drawn between L.P. Section and U.P. Section even in cases where the L.P. Section is added to the U.P. Section for the purpose. We may now refer to Rule 6B(2)(a) of Chapter XXIII. The said provision is extracted for easy reference.

> 6B (2) Notwithstanding anything contained in any other rules in this Chapter, no post of Specialist Teacher or Craft Teacher shall be created in any Upper Primary School or Upper Primary Section of High School except as specified herein:
>
> (a) One post of Specialist teacher namely Music teacher or Physical Education Teacher or Drawing Teacher or Sewing Teacher as decided by the District Educational Officer concerned during staff fixation in the case of departmental schools and as required by the manager in the case of aided schools will be sanctioned in each Upper Primary School or Upper Primary section of a High School having an effective strength of 500 pupils and above in the complete Upper Primary sections on the 6th working day of each academic year.

Learned judge in O.P. No 18097 of 1994 placed considerable emphasis on “U.P. School having an effective strength of 500 pupils” forgetting the fact that post is sanctioned in each upper primary section or upper primary section of a high school having effective strength of 500 pupils. Emphasis is evidently on “effective strength of pupils in each section”. The above mentioned rule would indicate

that effective strength of U.P. Section has to be taken into account separately for the specialist post. Further it may also be noted that separate divisions are functioning in L.P and U.P sections. In Ext.P7 itself it is stated that as per rule 2 (3) Chapter XXIII K.E.R there is no provision to restore the post of Needle Work teacher in L.P. Section. Rule 2 (3) of Chapter XXIII says that notwithstanding anything contained in the above rules, no post of Specialist Teacher shall be created in any lower primary school or lower primary sections of upper primary or high schools. So far as the school in this case is concerned it is an Upper Primary school and the rule applicable is rule 6B (2) (b) of Chapter XXIII wherein, as already indicated, it is stated that no specialist post is allowable in any category under clause (a) if a specialist teacher is already working in the U.P. Section and therefore strength of L.P. Section alone be considered for creating specialist post as per Rule 6B(2)(a) of Chapter XXIII.

4. Above being the legal position, we find it difficult to accept the reasoning of the learned judge in O.P. No 18097 of 1994 and hence the judgment of the learned judge in O.P. No 18097 of 1994 would stand overruled. Applying the principle, we find no illegality in

the Department rejecting approval of appointment of the fourth respondent. Strength of the school during the year 1993-94 was 660, including the strength in L.P. Section. Effective strength of pupils in the U.P. Section during 1994-95 was only 404. During 1995-96 effective strength in the U.P. Section of the school was below 500 and therefore there was no scope for creating a new specialist post. During the year 1999-2000 effective strength of the school in the U.P. Section was only 336. In such circumstances educational authorities have rightly rejected approval of the appointment of the fifth respondent since there was no sanctioned post on the basis of effective strength in the U.P. section. The original petition lacks merits and the same would stand dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

18/08/2007
en/

[true copy]

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of the proceedings of the 4th respondent C/3513/93 dated 14.7.1993
Ext.P2 - True copy of the appointment order given to the 5th respondent dated 6.6.1994
Ext.P3 - True copy of the order dated 22.9.1994 issued by the fourth respondent
Ext.P4 - True copy of the order No D Disc 3321/94 dated 14.7.1994
Ext.P5 - True copy of the order No D Dis B4 284.93/94
Ext.P6 - True copy of order of Joint Director of Public Instructions
Ext.P7 - True copy of order dismissing the petitioners appeal dated 25.4.1995
Ext.P8 - True copy of the order dismissing the appeal issued by the third respondent dated 27.11.1995
Ext.P9 - True copy of order dated 28.3.1996
Ext.P10 - True copy of the order dismissing the petitioner's appeal dated 24.06.1996
Ext.P11 - True copy of the order No D Dis/3339/99 dated 15.7.1999
Ext.P12 - True copy of the order dismissing the petitioners appeal dated 19.11.1999

[true copy]